

TESTIMONY OF EDWARD K. THOMAS
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American Indians on Trust Fund Reform

Joint Oversight Hearing on American Indian Trust Management
Practices in the U.S. Department of the Interior

Before the U.S. Senate Committee on Indian Affairs and
the U.S. Senate Committee on Energy & Natural Resources

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INTRODUCTION

GREETINGS FROM ALASKA! My name is Edward K. Thomas. I am the elected President of the Central Council of Tlingit and Haida Indian Tribes of Alaska, a federally-recognized Indian tribe from Southeast Alaska with over 23,000 members. I have served as the elected President of my Tribe since 1984. I also have served as a Member of the Advisory Board to the Special Trustee for American Indians on Trust Fund Reform since its inception in November of 1995.

Thank you for the opportunity to testify at the Joint Oversight Hearing on American Indian Trust Management Practices in the U.S. Department of the Interior. My testimony will focus on the Office of the Special Trustee for American Indians and its need for greater autonomy and independence from the Department of the Interior as a whole, as evidenced by Secretary Babbitt's January 5, 1999 order reorganizing the Office of the Special Trustee and the subsequent resignation of Paul Homan as the Special Trustee for American Indians.

AMERICAN INDIAN TRUST FUND MANAGEMENT

The Secretary's track record in managing American Indian trust funds has been less than exemplary through the years. Notwithstanding the numerous reports from the Inspector General of the Department of the Interior, the General Accounting Office, the Office of Management and Budget, and Congressional Committees concerning Indian trust funds, I regret to have to say that the Secretary has been altogether lax in correcting the Department's longstanding shortcomings.

In 1994, the Congress responded after many hearings and the consideration of the testimony of numerous witnesses, including tribal leaders from throughout the United States, and several different bills to address some of these deficiencies, by enacting Public Law 103-412, the American Indian Trust Fund Management Reform Act of 1994.

In passing this new law, the Congress sought to ensure better accountability and management of Indian trust funds through the implementation of reform measures necessary for the proper discharge of the Secretary's trust responsibilities to the 554 Indian tribes and their members. I felt then, and still do today, that the single-most important factor was to establish an autonomous Office of the Special Trustee for American Indians that would be independent from all other agencies within the Department of the Interior. I felt then, and still do today, that such an Office should be headed by a top-level Special Trustee in whom the Secretary demonstrably had placed complete and unfettered discretion so that all others within the Department know that when the Special Trustee spoke and acted, he or she would be doing so with the complete and unchallengeable authority of the Interior Secretary and of the President of the United States. I felt then, and still do today, that to be effective, such a Special Trustee should be given complete power to oversee and coordinate the reform of Departmental policies, practices, procedures and systems.

None of this can happen if the Secretary is inattentive. Or if the Secretary gives off signals that he lacks confidence in the Special Trustee. Or if the Secretary publicly or privately disagrees with and interferes with the actions taken by the Special Trustee. Or if the Secretary allows other agencies and offices within the Department to undermine the Special Trustee in the execution of its mission. Either reform and correction of the management of trust assets is the Department's top priority, or it is not. There can be no middle ground. And, Mr. Chairmen, I respectfully say that based on what I have seen over the course of years as the elected head of my Tribe and in my capacity as a member of the Advisory Board to the Special Trustee, I must sadly conclude that this Secretary and this Administration have not lived up to the goals and standards set forth in the 1994 Act, goals and standards which I might add are quite attainable. Rather, the Administration's actions since the Act was passed indicate that it is unwilling to implement the Act and trust fund management reform in a manner consistent with what Congress had intended.

While the Act was signed into law on October 25, 1994 and Paul Homan was identified as the primary candidate uniquely qualified to fill the Special Trustee position soon thereafter, it still took the Administration until late July of 1995 to forward his nomination to the Senate for confirmation at the start of the usual congressional August recess. With this delay on the part of the Administration, Mr. Homan was not confirmed and sworn in as the Special Trustee until September 25, 1995. But it was not until February 9, 1996 that the Secretary issued an order establishing the Office of the Special Trustee for American Indians and transferred the Office of Trust Funds Management from the Bureau of Indian Affairs to the Office of the Special Trustee. Thus, from the start, the Secretary chose to slow down the implementation of Act and hold off on the establishment of the Office of the Special Trustee. The Office was not up and running with a confirmed Special Trustee and support staff until well over a year after the Act was passed.

The Act directed the Special Trustee to submit to Congress within one year of appointment “a comprehensive strategic plan for all phases of the trust management business cycle that will ensure proper and efficient discharge of the Secretary’s trust responsibilities to Indian tribes and individual Indians” consistent with the Act. Consistent with this directive, the Office of the Special Trustee held a series of regional consultation meetings with Indian tribes to obtain tribal input in the process. Unfortunately, because of the rapidly approaching deadline, Indian tribes and individual Indians were afforded little time to digest and analyze the 120+ page draft Plan.

The Special Trustee did not submit his Comprehensive Strategic Plan to Congress until April 11, 1997, an added delay largely attributable to the resistance of the existing administrative systems within the Interior Department to be supportive of the Office of Special Trustee whose mission it was to recommend changes in that very Department which would remedy decades of mismanagement.

On the same day that the Special Trustee issued his Comprehensive Strategic Plan, the Secretary issued a statement expressing “significant concerns” with the Plan and its impact on the Federal trust responsibilities to Indian tribes and individual Indians. I can think of no more effective way for a Secretary to undercut his Special Trustee. Imagine the license which Secretary Babbitt’s “significant concerns” gave to those within the Department who saw the changes proposed by the Special Trustee as jeopardizing their spheres of power and influence and as threatening to expose their personal culpability in the Department’s mismanagement of these trust resources. With this statement, if not before, Secretary Babbitt sent a clear message to all Departmental officials that he had joined in the battle against the Special Trustee and that those undermining the Office of Special Trustee would have the blessing of the highest levels of the Department.

My personal role in this, in many ways bizarre, dynamic came about with the establishment by Special Trustee Homan of a nine-member advisory board for the purpose of advising him “on all matters within the jurisdiction of the Special Trustee” consistent with the Act. During the development and initial implementation of the Plan, the Advisory Board met on a regular basis to give advice to the Special Trustee and his key staff. Based on my own personal observation and participation, I can say that the progress achieved to date towards reforming the Department’s management of Indian trust funds is, more than any other factor, the product of Special Trustee Homan’s dedication and professionalism.

Despite the Special Trustee’s conduct and demeanor, it is clear that the role and mission of the Office of the Special Trustee has not been welcomed by the Department of the Interior. Of crucial importance has been the difficulty in getting the Clinton Administration to support full funding of the initiatives set forth in the Special Trustee’s Plan. The limited support for increased reform funding emerged only after the intercession of key members of these oversight Committees.

From the beginning of his tenure, Special Trustee Homan has fought an uphill battle within the Interior Department. This came to a head nearly two months ago when the Secretary issued a

memorandum and order reorganizing the Office of the Special Trustee, assigning new people to high level positions within the Office, and reassigning people from the Office to other positions within the Department. The Secretary developed and issued this edict without any consultation with the Special Trustee himself, the Advisory Board of which I am a member, the Intertribal Monitoring Association, tribal leaders, or, to my knowledge, any of the congressional Committees. Given this, I am saddened but not surprised that Paul Homan tendered his resignation from the position of Special Trustee for American Indians. I am concerned that, with Mr. Homan's departure, implementation of the Act will be relegated to the status of a pet project for the Secretary that is headed by Departmental officials entrenched in the same way of thinking that has led to the trust funds management debacle in the first place. The Secretary's edict gives this appearance. This is not reform.

While Paul Homan will be difficult to replace, I urge the Congress to insist that the President promptly nominate a successor and forward his or her name to the Senate for confirmation. It would be an even greater travesty if the Congress permitted the Department to allow the departure of Mr. Homan to become the excuse by which the Office of Special Trustee becomes impotent and the Act itself is consigned to the trash heap of history.

REFORMING THE REFORM EFFORTS — AMENDING THE 1994 ACT

Now that tribal leaders have had nearly two years to more fully understand the scope and vision of the Comprehensive Strategic Plan, I think that most would agree that the concepts and ideas for reform embodied in the Plan reflect the kind of innovative and creative approach necessary to provide for greater accountability in the management of Indian trust assets. Of course, much more tribal consultation, as well as an evaluation and analysis of alternatives, is needed. But these cannot happen, and no forward progress can be made, if the Secretary has pitted the Department against reform.

The shortcomings both on the part of the Special Trustee in his Comprehensive Strategic Plan and on the part of the Secretary in his usurpation and diminishment of the Special Trustee's authority can be remedied by the Congress. The 1994 Reform Act could be amended to afford the Office of Special Trustee greater independence from the Secretary and to direct more structured tribal consultation on a new draft Comprehensive Strategic Plan which identifies and analyzes a variety of options and approaches. Statutory reform in this manner could provide the new Special Trustee the added authority he or she needs and could provide the level of tribal involvement and input which is crucial to successful fulfillment of Congress's intent under the American Indian Trust Fund Management Reform Act.

I would encourage the Congress to consider amending the 1994 Act to accomplish these statutory goals. In doing so, I urge the Congress to look first at the draft legislation under consideration before H.R. 4833 was introduced. The original drafts under consideration, which elicited a fair amount of pressure and opposition from the Department during the developmental stages, provided for greater autonomy and independence of the Special Trustee. I acknowledge that the

Congress cannot, by legislative fiat, require the Interior Secretary to act at all times in good faith nor to give the trust functions of the Department toward Native Americans and their assets his singular and undivided loyalty. However, there are structures and procedures that can be mandated by statute whereby the Congress can be assured that an independent and autonomous Special Trustee has the unmitigated authority to act in a manner befitting the sacred trust inherent in the role of a trustee. I would urge that the 1994 Act be amended in this way.

CONCLUSION

Thank you very much, Mr. Chairman and Members of the Committee, for the opportunity to present this testimony on behalf of Central Council of Tlingit and Haida Indian Tribes of Alaska and its citizens, as well as from my perspective as a Member of the Special Trustee's Advisory Board. I wish you well as you do your work in this Congress and I hope my comments are useful as you consider these very important issues.